

**FLATHEAD COUNTY PLANNING AND ZONING OFFICE**  
**ZONING MAP AMENDMENT REPORT (#FZC-20-06)**  
**KELCEY AND TAWNYA BINGHAM**  
**MAY 26, 2020**

**I. GENERAL INFORMATION**

**A. Project Description**

This a report to the Flathead County Planning Board and Board of Commissioners regarding a request by Kelcey and Tawnya Bingham, for a zoning map amendment within the Rural Whitefish Zoning District. The proposed amendment, if approved, would change the zoning of the subject property from '*SAG-10 Suburban Agricultural*' to '*R-2.5 Rural Residential*.'

**B. Application Personnel**

**1. Owner**

Kelcey and Tawnya Bingham  
400 E. Texas Avenue  
Whitefish, MT 59937

**2. Applicant**

Terra Designworks LLC.  
234 2<sup>nd</sup> Street West  
Kalispell, MT 59901

**C. Process Overview**

Documents pertaining to the zoning map amendment are available for public inspection in the Flathead County Planning and Zoning Office located in the South Campus Building at 40 11<sup>th</sup> Street West in Kalispell.

**1. Land Use Advisory Committee/Council**

This property is not located within the jurisdiction of a Land Use Advisory Committee.

**2. Planning Board**

The Flathead County Planning Board will conduct a public hearing on the proposed zoning map amendment on June 10, 2020 at 6:00 P.M. at the Trade Center Building at the Northwest Montana Fairgrounds located at 265 North Meridian Road, Kalispell. A recommendation from the Planning Board will be forwarded to the County Commissioners for their consideration. This space is reserved for a summary of the Planning Board's discussion and recommendation.

**3. Commission**

In accordance with Montana law, the Commissioners will hold a public hearing on the proposed zoning map amendment. Prior to the Commissioner's public hearing scheduled for July 9, 2020, documents pertaining to the zoning map amendments will also be available for public inspection in the Office of the Board of Commissioners at 800 South Main Street in Kalispell.

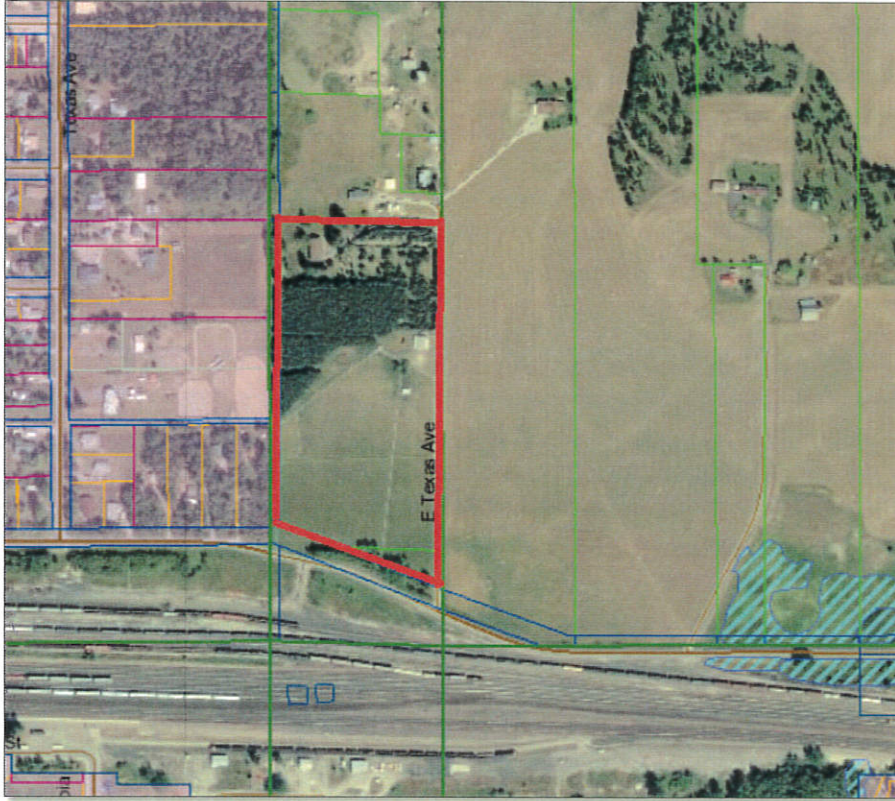
**II. PROPERTY CHARACTERISTICS**

**A. Subject Property Location and Legal Description**

The property is located at 400 East Texas Avenue, Whitefish, MT with a total acreage of approximately 13.674 acres (see Figure 1). The property is legally described as:

Parcel a of Certificate of Survey No. 20612, located in U.S. Government Lot 4 in Section 30, Township 31 North, Range 21 West, Flathead County, Montana.

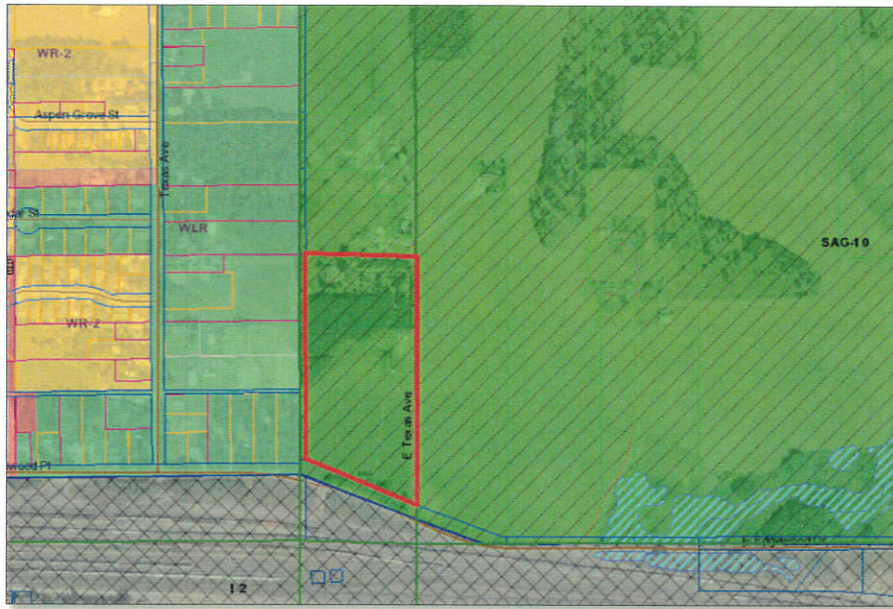
**Figure 1:** Subject property (outlined in red)



**B. General Character of and Reason for Amendment**

The subject property contains one tract of land. The property contains a single family dwelling, barn and accessory structures. As previously stated, the property is currently zoned SAG-10 and the applicant is proposing to amend the zoning to R-2.5. The application states the reason for the zone change is “The owner would like to perform a family transfer of 2.5 acres out of 13.674 acres to a family member. The rezoning is necessary due to zoning code minimum lot size requirements of 10 acres within SAG-10 zoning designation.”

**Figure 2:** Current zoning on the subject property (highlighted in red)



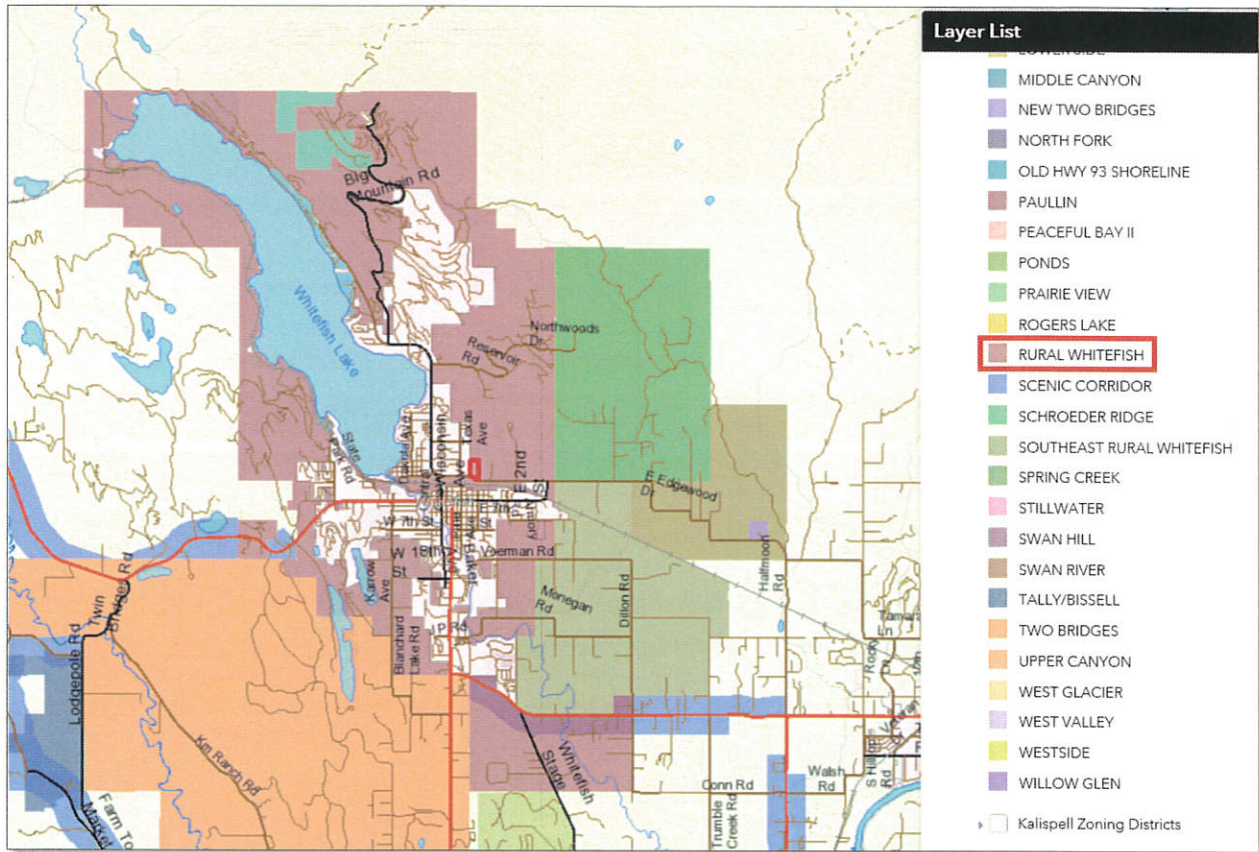
**C. Adjacent Zoning and Character of the Overall Zoning District**

The property is located in the Rural Whitefish Zoning District. The character of the zoning district in the vicinity of the subject property is suburban agricultural, agricultural, residential uses and the BNSF Railroad to the south. The property is located on East Texas Avenue and adjacent to the City of Whitefish.

Directly adjacent to the north and east is SAG-10, to the south is I-2, and to the west is Whitefish City WLR zoning.



**Figure 3:** Rural Whitefish Zoning District in mauve (subject property outlined in red)



### Public Services and Facilities

Sewer: N/A  
 Water: Whitefish City  
 Electricity: Flathead Electric Cooperative  
 Natural Gas: Northwestern Energy  
 Telephone: CenturyTel  
 Schools: Whitefish School District  
 Fire: Rural Whitefish Fire District  
 Police: Flathead County Sheriff

## III. COMMENTS

### A. Agency Comments

1. Agency referrals were sent to the following agencies on March 23, 2020:
  - Bonneville Power Administration
  - City of Whitefish Planning Department
  - Whitefish School District
  - Rural Whitefish Fire District
  - Flathead City-County Health Department
  - Flathead County Road and Bridge Department
  - Flathead County Sheriff
  - Flathead County Solid Waste

- Flathead County Weeds and Parks Department
2. The following is a summarized list of agency comment received as of the date of the completion of this staff report:
- Flathead Environmental Health Department
    - Comment: “No comment.”
  - Flathead County Road & Bridge Department
    - Comment: “At this point the County Road Department does not have any comments on this request.”

#### **B. Public Comments**

1. Adjacent property notification regarding the proposed zoning map amendment was mailed to property owners within 150 feet of the subject property on May 20, 2020. Legal notice of the Planning Board public hearing on this application was published in the May 24, 2020 edition of the Daily Interlake.

Public notice of the Board of County Commissioners public hearing regarding the zoning map amendment will be physically posted on the subject property and within the zoning district according to statutory requirements found in Section 76-2-205 [M.C.A]. Notice will also be published once a week for two weeks prior to the public hearing in the legal section of the Daily Interlake. All methods of public notice will include information on the general character of the proposed zoning map amendment, and the date, time, and location of the public hearing before the Flathead County Commissioners on the requested zoning map amendment.

2. Public Comments Received

As of the date of the completion of this staff report, no public comments have been received regarding the requested zoning map amendment. It is anticipated any member of the public wishing to provide comment on the proposed zoning map amendment may do so at the Planning Board public hearing scheduled for June 10, 2020 and/or the Commissioner’s Public Hearing. Any written comments received following the completion of this report will be provided to members of the Planning Board and Board of Commissioners and summarized during the public hearing(s).

### **IV. EVALUATION OF PROPOSED AMENDMENT**

Map amendments to zoning districts are processed in accordance with Section 2.08 of the Flathead County Zoning Regulations. The criteria for reviewing zoning amendments are found in Section 2.08.040 of the Flathead County Zoning Regulations and 76-2-203 M.C.A.

#### **A. Build-Out Analysis**

Once a specific zoning designation is applied in a certain area there are certain land uses that are permitted or conditionally permitted. A build-out analysis is performed to examine the maximum potential impacts of full build-out of those uses. The build-out analysis is typically done looking at maximum densities, permitted uses, and demands on public services and facilities. Build-out analyses are objective and are not best or worst case scenarios. Without a build-out analysis to establish a foundation of understanding, there is no way to estimate the meaning of the proposed change to neighbors, the environment, future demands for public services and facilities and any of the evaluation criteria, such as impact to transportation systems. Build-out analyses are simply establishing the meaning

of the zoning map amendment to the future of the community to allow for the best possible review.

Per Section 3.09 of the Flathead County Zoning Regulations (FCZR), R-2.5 is defined *'A district intended for rural, primarily residential areas where larger, estate-type lot sizes are appropriate and agricultural/silvicultural/horticultural operations are a decreasingly viable land use. The use of this district is appropriate in transition areas adjacent to and between higher-density Residential (R) and lower-density Suburban Agriculture (SAG) zones. This district is not appropriate in areas primarily surrounded by lower-density SAG and AG zones and/or areas adjacent to significant ongoing agricultural/silvicultural/horticultural and/or extractive industry operations. Furthermore, public facilities should be appropriately developed to accommodate the density and land uses of this designation. This includes paved roads. It is intended that no uses be permitted in this district that will tend to devalue property for residential purposes or interfere with the health, safety, order or general welfare of persons residing therein.'*

The SAG-10 designation is defined in Section 3.07 FCZR as, *'A district to provide and preserve agricultural functions and to provide a buffer between urban and unlimited agricultural uses, encouraging separation of such uses in areas where potential conflict of uses will be minimized, and to provide areas of estate type residential development.'*

The permitted uses and conditional uses for the SAG-10 and the R-2.5 zoning are very similar. The amendment would reduce the number of permitted uses from 20 to 15 and the number of conditional uses from 24 to 23. Public stable is the only SAG-10 permitted use listed as a conditional use in the proposed R-2.5 zone and there are two conditional uses within the R-2.5 zone not allowed in SAG-10 (Radio and television broadcast station and Cluster development dwellings).

The permitted and conditional uses allowed within the SAG-10 but not allowed in R-2.5 are:

- Class B manufactured home.
- Cluster housing
- Dairy products processing, bottling, and distribution
- Ranch employee housing
- Riding academy, rodeo arena
- Animal hospital, veterinary clinic.
- Contractor's storage yard.
- Extractive industry.
- Kennel, commercial.
- Recreational facility.

The bulk and dimensional requirements within the current and proposed zoning require a 20 foot setback from front, rear, side-corner and side boundary line for principal structures and a setback of 20 feet for the front and side-corner and 5 feet from the rear and side for accessory structures. A 20 foot setback is required from streams, rivers and unprotected lakes which do not serve as property boundaries and an additional 20 foot setback is required from county roads classified as collector or major/minor arterials for both the proposed and current zoning. For SAG-10 the permitted lot coverage is 20% and a



maximum height of 35 feet and for R-2.5 the permitted lot coverage is 25% and maximum height of 35 feet.

The existing zoning requires a minimum lot area of 10 acres. Since the subject property totals 13.674 acres, zero additional lots could be created. The proposed zoning requires a minimum lot area of 2.5 acres therefore approximately four additional lots could be created. The bulk and dimensional requirements are similar but the amendment would reduce the number of permitted uses and conditional uses.

**B. Evaluation of Proposed Amendment Based on Statutory Criteria (76-2-203 M.C.A. and Section 2.08.040 Flathead County Zoning Regulations)**

**1. Whether the proposed map amendment is made in accordance with the Growth Policy/Neighborhood Plan.**

The proposed zoning map amendment falls within the jurisdiction of the Flathead County Growth Policy, adopted on March 19, 2007 (Resolution #2015 A) and updated October 12, 2012 (Resolution #2015 R).

The Flathead County Growth Policy Designated Land Uses Map identifies the subject property as 'Suburban Agriculture.' The proposed 'R-2.5 Rural Residential' zoning classification would appear to agree with the current designations. Chapter 10 Part 3: Land Uses Maps of the Growth Policy under the heading Designated Land Use Maps specifically states, "This map depicts areas of Flathead County that are legally designated for particular land uses. This is a map which depicts existing conditions. The areas include zoning districts which are lumped together by general use rather than each specific zone and neighborhood plans. Further information on particular land uses in these areas can be obtained by consulting the appropriate zoning regulations or neighborhood plan document. The uses depicted are consistent with the existing regulations and individual plan documents. This map may be changed from time to time to reflect additional zoning districts, changes in zoning districts, map changes and neighborhood plans as they are adopted. Since this map is for informational purposes, the Planning Staff may update the same to conform to changes without the necessity of a separate resolution changing this map." Staff interprets this to mean the Designated Land Use Map is not a future land use map that implements policies, but rather a reflection of historic land use categories. If the zoning map amendment is approved the Designated Land Use Map can be updated by staff to reflect changes made by the County Commissioners based on goals and policies of the Growth Policy.

The introduction of Chapter 1 states, *'High density residential development has the potential to change the character of a rural area and create safety and health hazards if not properly guided. Similarly, low density development in areas well suited for development can be an inefficient use of land resources.'*

The property is located in a rural area of the county that is a combination of properties which are within city limits or under county jurisdiction. The properties directly to the west are within the jurisdiction of Whitefish zoned WLR. To the south is zoned county I-2 and to the north and east is SAG-10. It is a combination of open space and wooded acreage.

Part 4 of Chapter 2 the Growth Policy states, *'It is clear that agriculture plays a vital role in both the economy and culture of Flathead County. The custom and culture of*

*agriculture in Flathead County is one of the features that is contributing to rapid growth and development. Lands that have traditionally been used for agriculture are being converted increasingly to residential uses as residents seek rural living.*’ The subject property is not currently being used for agriculture.

The introduction to Part 7 of Chapter 2 states, *‘The density of residential developments is an issue raised throughout the public involvement process [...] Residential development, including the subdivision of land, is not inherently problematic. However, residential development at a density that is not compatible with existing local services and neighborhood character is likely to be contentious.’* It goes on to say that, *‘Capacity is based on the size and quality of the road, and once the capacity is exceeded, public safety suffers. Low density residential land uses on low capacity roads are a match, but medium or high density land uses on low capacity roads create problems.’*

Part 7 of Chapter 2 also states, *‘Appropriate densities can be dictated by the land itself. Areas with shallow groundwater or limited access to groundwater are more suited to low density residential land uses. High density residential land uses should be avoided in areas of steep slopes due to the risk of rockslides, mudslides, severe erosion, earthquakes, and avalanches. Although it is easy for a community to gradually forget about the devastating impacts of floods, floodplains with less than a 1% chance of flooding each year (areas between the 100 and 500-year floodplain) are still sure to flood again.’*

The property is located on East Texas Avenue a gravel two lane private road within a 30 foot easement, capable of supporting the capacity of four additional single family homes. The property is located adjacent to property zoned Whitefish WLR which has a density of 2.5 units per acre. The property is not located within the floodplain and the R-2.5 zoning is not generally considered high density.

The following is a consideration of goals and policies which appear to be applicable to the proposed zone change:

- ❖ **G.2** – *Preserve the rights of property owners to the use, enjoyment and value of their property and protect the same rights for all property owners.*
  - The amendment would allow the owner to subdivide but would also allow for the continuation of the existing use on the property.
- ❖ **G.8** – *Safe, healthy residential land use densities that preserve the character of Flathead County, protect the rights of landowners to develop land, protect the health, safety, and welfare of neighbors and efficiently provide local services.*
  - The R-2.5 designation would allow for densities of 1 dwelling units per 2.5 acres which would likely not require public services because 2.5 acres lots can be serviced by septic systems and wells.
- **P.8.2** – *Identify required criteria for various densities that support the seven elements of the public’s vision outlined in Chapter 1.* The Seven Elements of the Public’s Vision include:



- *Protect the Views*

The vision states, *'One characteristic that residents of Flathead County cherish is the view. Views of mountains, lakes, forests, wildlife, and open spaces are cited as characteristics residents of Flathead County would not change. "Scenic resources" are valued throughout the county regardless of age, gender or location.'* The proposed zone change if approved would likely have minimal impact on views because it is located adjacent to similarly zoned City of Whitefish properties with similar densities.
- *Promote a Diverse Economy*

The vision states, *'The cost of living and home ownership should be affordable to the median income.'* The proposed zone change if approved could allow for additional single family residential adding to the housing supply which has the potential to make homeownership more affordable because the R-2.5 zone would continue to allow for accessory dwelling units (ADU) and single family dwellings which have the potential to add affordable rental units to the county.
- *Manage Transportation*

Vision 3 discusses managing traffic flow through land development patterns; this report contains discussion regarding the proposals impacts on traffic below.
- *Maintain the Identity of Rural Communities*

The vision states, *'Preventing communities from growing together and losing their unique identities was another concern of many scoping meeting participants. The concern of seeing Flathead County turn into one continuous sprawling development was expressed in a variety of ways. Many residents of Flathead County do not want to see strip malls, used car lots, mini storage, warehouse stores, lumber yards, and other visually dominating land uses disrupt the perception of driving between unique rural communities.'* The property is located on the northeast edge of Whitefish several miles from other communities and would not allow for any commercial development.
- *Protect Access to and Interaction with Parks and Recreation*

This report contains a discussion on parks and recreation below.
- *Properly Manage and Protect the Natural and Human Environment*

The vision states, *'Air and water quality were mentioned frequently as well as co-habitation of people and wildlife being qualities that make Flathead County unique and desirable. Many residents expressed a desire to protect the lakes, rivers, ponds, groundwater and air for future generations.'* The property does not contain any surface waters or groundwater which would be impacted by this proposal. The slight increase residential density is likely to have a minimum impact on air quality.
- *Preserve the Rights of Private Property Owners.*

As previously stated, the amendment would allow the owner to subdivide the property, but would also allow for the continuation of a single family dwelling on the property.

- ❖ **G.15** – *Promote a diverse demographic of residents.*
  - **P.15.1** – *Encourage housing, employment, education and recreation to attract, support and maintain young families.*
    - The proposed zone would allow for single family dwelling, manufactured homes and accessory dwelling units as permitted uses, all of which has the potential to make housing more affordable for young families.
- ❖ **G.16** – *Safe housing that is available, accessible, and affordable for all sectors of the population.*
- ❖ **G.23** – *Maintain safe and efficient traffic flow and mobility on county roadways.*
  - **P.23.2** – *Limit private driveways from directly accessing arterials and collector roads to safe separation distances.*
    - East Texas Avenue a gravel two lane private road within a 30 foot easement and the property currently has an approach. It is likely, given the configuration of the property that the existing approach would be utilized for any new lots as shared approaches and the number of new accesses would be minimal.
- ❖ **G.31** – *Growth that does not place unreasonable burden on the school district to provide quality education.*
  - This report contains discussion on the proposal’s potential burden on schools below.
- ❖ **G.32** – *Maintain consistently high level of fire, ambulance and emergency 911 response services in Flathead County as growth occurs.*
- ❖ **G.33** – *Maintain a consistently high level of law enforcement services in Flathead County as growth occurs.*
  - This report contains discussion on the adequacy of emergency service below.
- ❖ **G.41** – *Promote the preservation of critical fish and wildlife habitat and preserve the area’s unique outdoor amenities and quality of life.*
  - **P.41.2** – *Discourage unmitigated development in areas identified as critical wildlife habitat.*
    - Given the properties close proximity to the City of Whitefish and the fact the neighboring properties are already used for residential purposes, impacts on wildlife would likely be minimal.

The applicant states, “The 2015 Flathead County Growth Policy currently has this parcel identified as Suburban Agricultural Land Use, which consists of two zoning districts with minimum lot sizes of 5 acres (SAG-5) and 10 acres (SAG-10). The 2007 City of Whitefish Growth Policy has this parcel identified as Rural Residential on their future land use map, which is consistent with the County zoning district R-2.5. This indicates that the City of Whitefish intends to create a transitional zone in this area and designate it as WCR-Whitefish Country Residential as they are annexed into the City. A transitional zone is appropriate considering that the zoning to the west of this parcel is WLR-Whitefish Limited Residential with 15,000 sq. ft. lot sizes, and the zoning to the east of this parcel is SAG-10 with 10 acres minimum lot sizes.”

**Finding #1:** The proposed zoning map amendment generally complies with the Flathead County Growth Policy because the R-2.5 zone would allow for manufactured homes, single family homes and ADUs which has the potential to allow for affordable housing options, the property is located adjacent to Whitefish WLR zoning and impacts on wildlife would likely be minimal.

**2. Whether the proposed map amendment is designed to:**

**a. Secure safety from fire and other dangers;**

The subject property is located within the Rural Whitefish Fire District and the nearest fire and emergency response center is located approximately 2.4 miles south of the property on Flathead Avenue in Whitefish. The Whitefish Fire Department would respond in the event of a fire or medical emergency. The Whitefish Fire Department did not provide comments on this proposal. The subject property is located within the Wildland Urban Interface (WUI) and is within a medium high county wide priority area however it is not in a fire district priority area.

The subject property is located on East Texas Avenue a gravel two lane private road within a 30 foot easement. The road appears adequate to provide ingress and egress for emergency services.

According to the application, “Adequate access and public emergency services are currently available to the property in case of emergency. The parcel currently has an existing residence that is to remain, and no other improvements are being proposed at this time. There are no features related to the property which would compromise the safety of the public. All currently available emergency services will remain available to the property.”

FEMA FIRM Panel 30029C1090J shows the property as located within an unshaded Zone X an area determined to be outside the 0.2% annual chance floodplain. There is a low chance of flooding on the subject property.

**Finding #2:** The proposed map amendment will not impact safety from fire and other danger because the property is located on a gravel two lane private road within a 30 foot easement, is located approximately 2.4 miles from the nearest fire station, is not in the 100 year floodplain and the property’s location in the WUI can be mitigated following firewise practices with statements on the final plat.

**b. Promote public health, public safety, and general welfare;**

The application states, “The requested zoning classification of R-2.5 will promote the health and general welfare by limiting the scale/scope of future agricultural use, since this land use restricts agricultural activities such as dairy processing, etc. which would not be appropriate adjacent to City limits.” The property is located on East Texas Avenue, which appears adequate to provide access for emergency services which would help to ensure adequate public health and safety. As previously stated, the Whitefish Fire Department would respond in the event of a fire or medical emergency. The Flathead County Sheriff’s Department currently provides and will continue to provide police services to the subject property. The Sheriff’s Department also has in place an inter-local agreement with the Whitefish Police Department for mutual assistance.



The permitted uses and conditional uses for the SAG-10 and the R-2.5 zoning are similar. The amendment would reduce the number of permitted uses from 20 to 15 and the number of conditional uses from 24 to 23. Because of the similarity in uses the impacts on public health, public safety and general welfare should be minimal.

**Finding #3:** The proposed zoning map amendment would likely not have a negative impact on public health, public safety and general welfare because the property is served by the Whitefish Fire Department and the Flathead County Sheriff, the property is accessed via a paved road and the R-2.5 zoning would allow for similar uses to what already exist in the area.

**c. Facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.**

Primary access to the property is currently off East Texas Avenue. East Texas Avenue a gravel two lane private road within a 30 foot easement at this location. The Flathead Road and Bridge Department did not have comments on this request.

As East Texas Avenue is a private road, there are no traffic counts available from the Flathead County Road and Bridge Department. However counting the lots accessed from East Texas Avenue, it appears six lots utilize the road. Using standard trip generation, residential uses generate traffic at typically 10 vehicle trips per dwelling for single family. As a result the average daily trips could be estimated at 60 trips per day. Approximately four additional single family lots could be created, which would generate 40 average daily trips (ADT) for an increase of 66% on East Texas Avenue.

East Texas Avenue is accessed by East Edgewood Drive which is a county maintained, public paved two land road within a 60 foot easement. According to the latest traffic counts from the Flathead Road and Bridge Department in 2019, East Edgewood Drive west of East 2<sup>nd</sup> Street had an ADT of 2034. The addition of 40 ADT would result in an increase of 1.9% on East Edgewood Drive.

The application states, “The property is currently on city water and has an existing septic system. The requested zone amendment will not alter current transportation patterns, schools or any other public requirements.” The applicant will be required to work with the city of Whitefish and the Flathead City-County Health Department to develop water and sewer systems to meet the needs of any future development. The Environmental Health Department had no comments for the zone change.

While the subject property is located within the Whitefish School District the school district did not provide comments on this proposal. The proposed zoning has the potential to generate school children but is not likely to impact either school. According to census data for Flathead County, the average household size is 2.46 persons and approximately 16.5% of the population is between the ages of 5-18 years. The proposal has the potential to generate four additional dwellings and therefore could generate approximately two school age children.

The development of lots 2.5 acres in size would likely trigger parkland requirements during subdivision review. There are many parks, natural areas, and

recreational opportunities within a short drive and the property is not likely to effect the adequate provision of parkland.

**Finding #4:** The proposed amendment would facilitate the adequate provision of transportation water, sewerage, schools, parks, and other public requirements because future growth would lead to a minimal increase in traffic on East Edgewood Drive, further division of land on the subject property would require review through the Flathead City-County Health Department and the Montana Department of Environmental Quality, there would be minimal impact on parks and the proposal has the potential to generate 2 school age children.

**3. In evaluating the proposed map amendment, consideration shall be given to:**

**a. The reasonable provision of adequate light and air;**

The application states, "Setbacks and building heights are consistent between the existing and proposed zone, so the availability of light and air will not be altered. The standards for setbacks, building heights and lot coverage are established in the zoning ordinance to ensure adequate light and air is provided."

As the applicant states the bulk and dimensional requirements, which includes setbacks, have been established to provide for a reasonable provision of light and air. The minimum lot area for the proposed R-2.5 zone is 2.5 acres and the minimum lot area for the existing SAG-10 zone is 10 acres. The density allowed within R-2.5 would be greater than the density allowed within the current SAG-10 zone. The maximum building height within the proposed R-2.5 zone is 35 feet for a principal structure and 18 feet for an accessory structure and the maximum height for the existing SAG-10 zone is 35 feet for both a principal and accessory structure. The permitted lot coverage is 20% in the SAG-10 zone and 25% in the proposed R-2.5 zone.

The setback requirements is the same in the proposed R-2.5 zone as the existing zoning. The required setback from the boundary line is 20 feet from all property boundaries for the principal structure, 20 feet from the front and side corner on accessory structures and 5 feet from the rear and side on accessory structures. A 20 foot setback is required from streams, rivers and unprotected lakes which do not serve as property boundaries and an additional 20 foot setback is required from county roads classified as collector and arterials.

The setbacks for the proposed zone are the same as those in the existing SAG-10 zoning while a greater area of a lot can be covered in the R-2.5 zone. The bulk and dimensional requirements for the R-2.5 designation have been established to provide for a reasonable provision of light and air.

**Finding #5:** The proposed zoning map amendment would provide adequate light and air to the subject property because future development would be required to meet the bulk and dimensional, setbacks and lot coverage requirements within the proposed R-2.5 designation.

**b. The effect on motorized and non-motorized transportation systems;**

Primary access to the property is currently off East Texas Avenue. East Texas Avenue a gravel two lane private road within a 30 foot easement. The Flathead

County Road and Bridge Department did not have a comment on this request. Comment from the applicant states, “The property is not proposing to change or add any access points to existing road ways, and has no plans to increase the density on the remaining 11.17 acres.”

As previously stated, there are no traffic counts on East Texas Avenue. East Texas Avenue is accessed by East Edgewood Drive and traffic counts from the Flathead County Road and Bridge Department taken in 2019 indicate an average daily traffic of 2034. Using standard trip generation, residential uses generate traffic at typically 10 vehicle trips per dwelling for single family. Approximately four additional single family lots could be created, which would generate 40 average daily trips for an increase of 1.9% on East Edgewood Drive.

The Flathead County Trails Plan identifies East Texas Avenue as well as East Edgewood Drive as a proposed recreational bike/pedestrian trails. It is anticipated there will be minimal impact on non-motorized traffic because future subdivision development on the property would require an easement for a bicycle trail along East Texas Avenue and East Edgewood Drive.

**Finding #6:** Effects on motorized and non-motorized transportation systems will be minimal because the Flathead County Road and Bridge Department had no concerns with this proposal, the traffic generated by the proposed zoning would be minimal and future development of the property would require an easements for pedestrian/bike trails.

**c. Compatible urban growth in the vicinity of cities and towns (that at a minimum must include the areas around municipalities);**

Whitefish is the nearest municipality to the subject property and is located adjacent to the property on the west. The property is located within the boundary of the Whitefish Growth Policy and is indicated on the Whitefish City – County Growth Policy Future Land Use Map. (See Figure 4). An agency referral was sent to the Whitefish Planning Department on March 23, 2020, however staff has not received any comments from the City as of the date on this report.

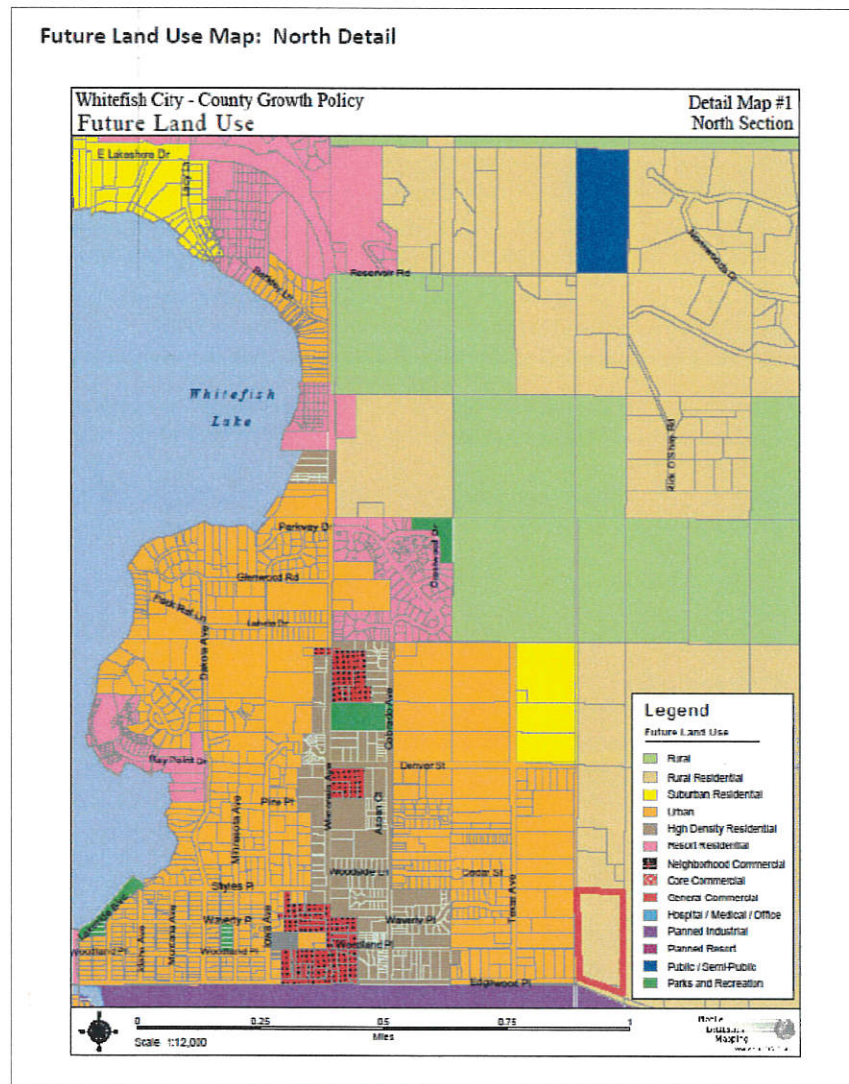
The Whitefish Growth Policy Planning Area Map designated the property as “Rural Residential.” According to the Whitefish Growth Policy the “Rural Residential” definition states, *“The rural residential designation is intended primarily for areas that are already divided into lots of 2 ½ to 10 acres in size. Its intent is to preserve rural character while allowing existing large-lot residential areas to continue without becoming non-conforming as to minimum lot size. Applicable zoning districts include WCR and WA-10. Rural residential is not seen as a desirable future development option, and this Growth Policy does not advocate designating additional areas for rural residential beyond what is already depicted on the Future Land Use Map.”* The properties located adjacent to the west have a Whitefish zoning WLR designation and are designated on the Planning Area Map as ‘Urban’. Again, referring to the Whitefish Growth Policy, the definition for “Urban” states, *“This is generally a residential designation that defines the traditional neighborhoods near downtown Whitefish, but it has also been applied to a second tier of neighborhoods both east of the river and in the State Park Road area.*



Residential unit types are mostly one and two-family, but town homes and lower density apartments and condominiums are also acceptable in appropriate locations using the PUD. Densities generally range from 2 to 12 units per acre. Limited neighborhood commercial located along arterial or collector streets are also included in this designation. Zoning includes WLR, WR-1, and WR-2.” The proposed R-2.5 zoning would not exceed two to four dwelling per gross acre and coincides with the definition or ‘Rural Residential’ as it would allow for lots of 2 ½ acres. It appears the proposed zoning designation would be compatible with urban growth in the vicinity of Whitefish.

**Finding #7:** The property is located within the extent of the City of Whitefish Growth Policy Future Land Use Map and the proposal appears to be compatible with urban growth in the vicinity of Whitefish because no comments were received from the City of Whitefish to indicate concern and the proposed zone is comparable to the existing Whitefish WLR zoning designation in the immediate vicinity of the property.

**Figure 4:** City of Whitefish Growth Policy Future Land Use Map (Subject property outlined red)



d. **The character of the district(s) and its peculiar suitability for particular uses;**  
The character of the district and its peculiar suitability for particular uses can best be addressed using the “three part test” established for spot zoning by legal precedent in the case of *Little v. Board of County Commissioners*. Spot zoning is described as a provision of a general plan (i.e. Growth Policy, Neighborhood Plan or Zoning District) creating a zone which benefits one or more parcels that is different from the uses allowed on surrounding properties in the area. Below is a review of the three-part test in relation to this application and the character of the district and its peculiar suitability for particular uses.

i. ***The zoning allows a use that differs significantly from the prevailing use in the area.***

The subject property is located adjacent to higher density residential zoning of the City of Whitefish WLR. Within the vicinity is County I-2, Whitefish zoning WR-2 and WR-1 zoning. The proposed R-2.5 zoning would allow for agricultural and single family residential on 2.5 acre lots, similar to what exists in the area presently.

The uses to the south is industrial with the railroad, to the west is agricultural, to the north is similarly sized residential both within the City of Whitefish and the County. The proposed R-2.5 zone is designed as a transition zone between higher density residential areas and lower density suburban agricultural zones, per Section 3.43.010 FCZR. The uses allowed in the R-2.5 zone would not differ significantly from existing uses in the area or future uses on property that has been annexed into the City of Whitefish.

ii. ***The zoning applies to a small area or benefits a small number of separate landowners.***

The property is adjacent to Whitefish WLR which has a minimum lot size of 15,000 square feet. The R-2.5 has a minimum lot size of 2.5 acres. The proposal would change the zoning on approximately 13.674 acres to R-2.5 which is more compatible to the lots sizes permitted in the adjacent Whitefish WLR zoning designation.

iii. ***The zoning is designed to benefit only one or a few landowners at the expense of the surrounding landowners or the general public and, thus, is in the nature of special legislation.***

Since the zoning map amendment would apply to one tract for the benefit of one owner, this zoning map amendment may appear to be at the expense of the surrounding landowners. As previously stated the uses allowed within the proposed zone are similar to the existing uses on the properties within the vicinity. Many of the land uses listed as permitted uses in the proposed R-2.5 zone exist in the area of the subject property, or would not be out of character with the existing uses and to the east adjacent to the property is the already existing R-2.5 zoning.

Concerning this issue, the application states, “The property has a history of agricultural use including as equestrian pasture. The owner intends to keep the rural character of this use intact for the foreseeable future, however does not have plans

at this time to renew agricultural operations. This is particularly beneficial to the jurisdictions since this will preserve the visual appeal and historical vernacular that is favored by the residents in this area. Once again, it also provides an effective transitional zone between the zones to the east and west.”

In summary, all three criteria must be met for the application to potentially be considered spot zoning. The proposed zoning map amendment does not appear to be at risk of spot zoning, as it does not appear to meet all three of the criteria.

**Finding #8:** The proposed zoning map amendment appears suitable for the character of the district and does not appear to constitute spot zoning because the proposed zone change would be comparable to the existing WLR Whitefish zoning to the west of the subject property, is of a similar lot size to existing zoning in the area and would allow for similar uses to what exists in the area.

**e. Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.**

The subject property is located within the Rural Whitefish Zoning District and adjacent to residential and suburban agricultural zones (see Figure 2). The application states, “The owner of the property intends to keep this land and use it in retirement, and has no plans to remove an existing red barn that is iconic and well known to the community. Furthermore, the owner has no plans to subdivide the property aside from performing a one-time family transfer of the 2.5 acre parcel that is the reason for the requested zone amendment.”

Previous sections of this report have discussed the differences between permitted and conditional uses in the existing SAG-10 zoning and the proposed R-2.5 zoning. Conserving the value of buildings throughout the jurisdictional area is a function of allowing land uses that are appropriate and reasonable. Many of the land uses listed as permitted uses in the proposed R-2.5 zone exist in the vicinity of the subject property such as single family residential. The permitted and conditional uses would likely not impact the value of buildings and would be appropriate land uses throughout the area of the proposed zone change because they already exist in the area. The uses allowed in the proposed zoning are similar to the existing uses.

**Finding #9:** This proposed zoning map amendment appears to conserve the value of buildings and encourage the most appropriate use of land in this particular location because the R-2.5 designation allows for similar uses to the neighboring suburban agricultural and residential zoning, the area is currently rural residential and agricultural which is in line with the proposed R-2.5 zone.

**4. Whether the proposed map amendment will make the zoning regulations, as nearly as possible, compatible with the zoning ordinances of nearby municipalities.**

As previously stated, the subject property is included within the Whitefish Growth Policy Future Land Use Map. The Whitefish Growth Policy Future Land Use Map designated the property as “Rural Residential.”

The nearest City of Whitefish zoning is WLR adjacent to the west of the subject property. The Whitefish WLR zone is a residential zone that allows for single family



residential on 1 acre lots. The proposed R-2.5 is more compatible with the City residential zones than the existing SAG-10 based on lot size and uses allowed. The City has a zoning designation which is based on larger lot sizes (WA – Agricultural District) however it would not apply to this property because the minimum lot size is 15 acres. WCR – Country Residential District has a minimum lot size of 2.5 acres and WLR – Suburban Residential District are more compatible because the uses are similar and the minimum lot sizes are similar to the proposed R-2.5. The amendment appears to be, as nearly as possible, compatible with the zoning ordinance of the City of Whitefish.

**Finding #10:** The proposed map amendment of R-2.5 appears to be compatible with the zoning ordinance of Whitefish because the City has WCR Country Residential District and WLR Suburban Residential District which accommodates 2.5 acres and 1 acre respectively and is more compatible than the existing SAG-10 zoning.

## **I. SUMMARY OF FINDINGS**

1. The proposed zoning map amendment generally complies with the Flathead County Growth Policy because the R-2.5 zone would allow for manufactured homes, single family homes and ADUs which has the potential to allow for affordable housing options, the property is located adjacent to Whitefish WLR zoning and impacts on wildlife would likely be minimal.
2. The proposed map amendment will not impact safety from fire and other danger because the property is located on a gravel two lane private road within a 30 foot easement, is located approximately 2.4 miles from the nearest fire station, is not in the 100 year floodplain and the property's location in the WUI can be mitigated following firewise practices with statements on the final plat.
3. The proposed zoning map amendment would likely not have a negative impact on public health, public safety and general welfare because the property is served by the Whitefish Fire Department and the Flathead County Sheriff, the property is accessed via a paved road and the R-2.5 zoning would allow for similar uses to what already exist in the area.
4. The proposed amendment would facilitate the adequate provision of transportation water, sewerage, schools, parks, and other public requirements because future growth would lead to a minimal increase in traffic on East Edgewood Drive, further division of land on the subject property would require review through the Flathead City-County Health Department and the Montana Department of Environmental Quality, there would be minimal impact on parks and the proposal has the potential to generate 2 school age children.
5. The proposed zoning map amendment would provide adequate light and air to the subject property because future development would be required to meet the bulk and dimensional, setbacks and lot coverage requirements within the proposed R-2.5 designation.
6. Effects on motorized and non-motorized transportation systems will be minimal because the Flathead County Road and Bridge Department had no concerns with this proposal, the traffic generated by the proposed zoning would be minimal and future development of the property would require an easements for pedestrian/bike trails.

7. The property is located within the extent of the City of Whitefish Growth Policy Future Land Use Map and the proposal appears to be compatible with urban growth in the vicinity of Whitefish because no comments were received from the City of Whitefish to indicate concern and the proposed zone is comparable to the existing Whitefish WLR zoning designation in the immediate vicinity of the property.
8. The proposed zoning map amendment appears suitable for the character of the district and does not appear to constitute spot zoning because the proposed zone change would be comparable to the existing WLR Whitefish zoning to the west of the subject property, is of a similar lot size to existing zoning in the area and would allow for similar uses to what exists in the area.
9. This proposed zoning map amendment appears to conserve the value of buildings and encourage the most appropriate use of land in this particular location because the R-2.5 designation allows for similar uses to the neighboring suburban agricultural and residential zoning, the area is currently rural residential and agricultural which is in line with the proposed R-2.5 zone.
10. The proposed map amendment of R-2.5 appears to be compatible with the zoning ordinance of Whitefish because the City has WCR Country Residential District and WLR Suburban Residential District which accommodates 2.5 acres and 1 acre respectively and is more compatible than the existing SAG-10 zoning.

## **II. CONCLUSION**

Per Section 2.08.020(4) of the Flathead County Zoning Regulations (FCZR), a review and evaluation by the staff of the Planning Board comparing the proposed zoning map amendment to the criteria for evaluation of amendment requests found in Section 2.08.040 FCZR has found the proposal to generally comply with the review criteria, based upon the draft Findings of Fact presented above. Section 2.08.040 does not require compliance with all criteria for evaluation, only that the Planning Board and County Commissioners should be guided by the criteria.

Planner: DV